

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MALANJE PHEA,

Petitioner,

v.

CHRISTIAN PFEIFFER, Warden,

Respondent.

No. 2:20-cv-0283 WBS KJN P

ORDER and FINDINGS &
RECOMMENDATIONS

Petitioner is a state prisoner, proceeding pro se. On January 28, 2022, the petition for writ of habeas corpus under 28 U.S.C. § 2254 was dismissed and judgment was entered in favor of respondent. (ECF Nos. 89 (judgment); 88 (order adopting 52 & 63).) On March 8, 2022, petitioner filed a motion for relief from judgment under Rule 60(b)(3) of the Federal Rules of Civil Procedure. (ECF No. 91.) Respondent did not file an opposition. As discussed below, the motion should be denied.

Legal Standards

Rule 60(b) provides for relief from a judgment or order on the following grounds:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed

1 or vacated; or applying it prospectively is no longer equitable; or (6)
2 any other reason that justifies relief.

3 Fed. R. Civ. P. 60(b). “This rule, like the rest of the Rules of Civil Procedure, applies in habeas
4 corpus proceedings under 28 U.S.C. § 2254 only ‘to the extent that [it is] not inconsistent with’
5 applicable federal statutory provisions and rules.” Gonzalez v. Crosby, 545 U.S. 524, 529 (2005)
6 (footnote omitted) (citing 28 U.S.C. § 2254 Rule 11 & Fed. R. Civ. P. 81(a)(2)). A party may
7 seek relief from judgment under this rule only in limited circumstances. Id. Motions seeking
8 such relief are addressed to the sound discretion of the district court. Casey v. Albertson’s Inc.,
9 362 F.3d 1254, 1257 (9th Cir. 2004).

10 To prevail on a motion brought under Rule 60(b)(3), “the moving party must establish that
11 a judgment was obtained by fraud, misrepresentation, or misconduct, and that the conduct
12 complained of prevented the moving party from fully and fairly presenting the case.” In re M/V
13 Peacock on Complaint of Edwards, 809 F.2d 1403, 1404-05 (9th Cir. 1987). “The rule is aimed
14 at judgments which were unfairly obtained, not at those which are factually incorrect.” Id. The
15 Ninth Circuit has held that that “a party bears a high burden in seeking to prove fraud on the
16 court,” which must “involve an ‘unconscionable plan or scheme which is designed to improperly
17 influence the court in its decision.’” Abatti v. Comm’r, 859 F.2d 115, 118 (9th Cir. 1988)
18 (quoting Toscano v. Comm’r, 441 F.2d 930, 934 (9th Cir. 1971)). A reviewing court considers
19 “whether the integrity of the judicial process was itself harmed, such that the court cannot
20 perform its regular task of fairly adjudicating disputes.” Generally, examples involve “a scheme
21 by one party to hide a key fact from the court and the opposing party.” Pizzuto v. Ramirez, 783
22 F.3d 1171, 1180 (9th Cir. 2015). Courts “exercise the power to vacate judgments for fraud on the
23 court with restraint and discretion, and only when the fraud is established by clear and convincing
24 evidence.” See United States v. Estate of Stonehill, 660 F.3d 415, 443-44 (9th Cir. 2011).

25 The United States Supreme Court has held that a self-styled Rule 60(b) motion that
26 includes new claims or seeks to present new evidence in support of existing claims should be
27 construed as a successive habeas petition and not as a Rule 60(b) motion. Gonzalez, 545 U.S.
28 524. The Court noted that a purported Rule 60(b) motion “can also be said to bring a ‘claim’ if it

1 attacks the federal court’s previous resolution of a claim on the merits, since alleging that the
2 court erred in denying habeas relief on the merits is effectively indistinguishable from alleging
3 that the movant is, under the substantive provisions of the statutes, entitled to habeas relief.” Id.
4 at 532. See also United States v. Buenrostro, 638 F.3d 720 (9th Cir. 2011) (Rule 60(b) motion, in
5 which petitioner sought to bring a new claim of ineffective assistance of counsel, construed as a
6 successive petition). The court also recognized, however, that a “defect in the integrity of the
7 federal habeas proceedings,” such as “fraud on the habeas court,” might justify reopening a
8 habeas petition under Rule 60(b). Gonzalez, 545 U.S. at 532 & n.5.

9 Following Gonzalez, the Ninth Circuit explained that “a legitimate Rule 60(b) motion
10 ‘attacks . . . some defect in the integrity of the federal habeas proceedings,’ while a second or
11 successive habeas corpus petition ‘is a filing that contains one or more claims.’” Jones v. Ryan,
12 733 F.3d 825, 834 (9th Cir. 2013). On the other hand, “motions that allege fraud on the federal
13 habeas corpus court . . . are properly brought under Rule 60(b).” Pizzuto, 783 F.3d at 1176.

14 Discussion

15 Petitioner seeks relief under Fed. R. Civ. P. 60(b)(3), alleging “fraudulent representation”
16 and “prosecutorial misconduct.” (ECF No. 91.) However, petitioner’s arguments concern the
17 underlying criminal proceedings, specifically the alleged misconduct of the prosecution at trial, as
18 well as petitioner’s claim that the criminal charges were barred by the statute of limitations. Such
19 claims were not included in the operative petition. (ECF No. 22.) Motions that include claims
20 attacking petitioner’s underlying state court conviction are second and successive petitions, not
21 legitimate Rule 60(b) motions. Jones, 733 F.3d at 834. Petitioner may not prosecute a successive
22 habeas petition until he moves in the United States Court of Appeals for the Ninth Circuit for an
23 order authorizing the district court to consider the application pursuant to 28 U.S.C. § 2254(b)(3).
24 Gonzalez, 545 U.S. at 531 (“using Rule 60(b) to present new claims for relief from a state court’s
25 judgment of conviction – even claims couched in the language of a true Rule 60(b) motion –
26 circumvents AEDPA’s requirement that a new claim be dismissed unless it relies on either a new
27 rule of constitutional law or newly discovered facts”); Thompson v. Calderon, 151 F.3d 918, 921
28 (9th Cir. 1998) (“In most cases when the factual predicate for a Rule 60(b) motion also states a

1 claim for a successive petition under 28 U.S.C. § 2244(b), as it does in this case, the Rule 60(b)
2 motion should be treated as a successive habeas petition”).

3 Assuming arguendo that petitioner’s motion is properly brought under Rule 60(b),
4 petitioner is not entitled to relief. Petitioner’s arguments involve acts of alleged fraud and
5 misrepresentation by the prosecutor and the trial court in petitioner’s underlying state court trial,
6 not in the proceedings leading to the judgment denying habeas relief herein. Because petitioner
7 challenges the judgment rendered in this court, Rule 60(b) would provide relief only if petitioner
8 demonstrates that there was a fraud committed on this court, not the state court. Pizzuto, 783
9 F.3d at 1180. Petitioner failed to do so.

10 For all of the above reasons, petitioner is not entitled to relief under Rule 60(b)(3).
11 Petitioner has not otherwise provided any basis for the Court to grant reconsideration in this
12 matter. Petitioner’s motion for relief should be denied.

13 Motion for Counsel

14 Petitioner also requested the appointment of counsel. There currently exists no absolute
15 right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d 453, 460
16 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at any stage
17 of the case “if the interests of justice so require.” See Rule 8(c), Fed. R. Governing § 2254 Cases.
18 In the present case, the court does not find that the interests of justice would be served by the
19 appointment of counsel at the present time.

20 Conclusion

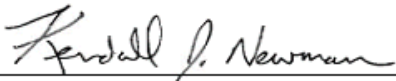
21 Accordingly, IT IS HEREBY ORDERED that petitioner’s motion for appointment of
22 counsel (ECF No. 92) is denied without prejudice; and

23 IT IS RECOMMENDED that petitioner’s motion (ECF No. 91) be denied.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
26 after being served with these findings and recommendations, any party may file written
27 objections with the court and serve a copy on all parties. Such a document should be captioned
28 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the

1 objections shall be filed and served within fourteen days after service of the objections. The
2 parties are advised that failure to file objections within the specified time may waive the right to
3 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: September 8, 2022

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6 KENDALL J. NEWMAN
7 UNITED STATES MAGISTRATE JUDGE

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